

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Preemption of State and Local)
Zoning and Land Use Restrictions)
on the Siting, Placement and Construction)
of Broadcast Station Transmission Facilities)

MM Docket No. 97-182

To: The Commission

COMMENTS OF
POLNET COMMUNICATIONS, LTD

Polnet Communications, Ltd. ("Polnet"), by its attorneys and pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby submits its comments in response to the *Notice of Proposed Rule Making* ("NPRM") in the above-referenced proceeding. The *NPRM* requested comments on the *Petition for Further Notice of Proposed Rule Making* ("Petition") filed jointly by the National Association of Broadcasters ("NAB") and the Association for Maximum Service Television ("AMST") ("Petitioners"). The *Petition* requested, *inter alia*, that the Commission adopt a rule that would allow the Commission to preempt state and local zoning and other land use regulations that have the effect of prohibiting or unreasonably delaying the introduction of digital television services ("DTV") and the construction of other ongoing broadcast transmission facilities.

^{1/} 47 C.F.R. § 1.415 (1997).

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I. INTRODUCTION

Polnet is the licensee of WNVR (AM), Vernon Hills, Illinois. WNVR is a five hundred watt non-directional standard broadcast station which provides an all Polish radio programming format within a 70 mile radius of Vernon Hills, including talk shows, European top 40 music, programs to enhance English-language skills, discussions of business and social issues, news, and information concerning immigration laws. WNVR has been broadcasting from a leased tower site in Vernon Hills, Illinois, since 1988; however, the property upon which the tower is located has recently been sold and it is uncertain whether extensions of the current lease will be granted by the new owners. In addition, in recognition of the large Polish-American population residing in the communities surrounding Vernon Hills, including McHenry, Lake, Cook, Kane and DuPage Counties in Illinois, the Milwaukee, Wisconsin metropolitan area, and southwest Michigan, Polnet desires to increase the coverage area of its station to serve the Polish-American population in those areas.

In light of the uncertainty surrounding its tower lease extension and its desire to increase its service area, Polnet sought a new tower site to support a directional system consisting of four towers that would allow the station to increase its service area to include a 120 mile radius. Allocation considerations effectively limited Polnet to a small area in McHenry County, Illinois. Within that area, there was only one parcel of property zoned for industrial use; however, not only was that parcel prohibitively expensive, but it was bisected by railroad tracks, making it unsuitable for an AM antenna system. Polnet's efforts to co-locate its proposed towers with other existing towers were unsuccessful because of the proposed configuration of Polnet's towers.

Polnet ultimately selected a site zoned for agricultural use in McHenry County, located in an area where interference to current residential or active farming property would be minimized. In selecting the site, Polnet noted that, although future residential use is planned, the proposed tower site would be located on a protected wetlands area that is unsuitable for any use requiring the construction of buildings. Because the proposed site would be located on protected wetlands area, Polnet conducted the necessary soil testing to determine whether the soil would support construction of the towers and researched the requirements necessary to comply with the Army Corps of Engineer's regulations and Federal Aviation Administration ("FAA") regulations regarding tower marking and lighting. Polnet also evaluated the proposed construction site to make sure that it would comply with the McHenry County Board's standards for conditional use.^{2/}

Polnet applied for a conditional use permit to construct four radio towers with the McHenry County Zoning Board. The application was opposed by individual residents, a corporation owning land to the south of the proposed site and the Village of Lakewood. In summary, opposing parties asserted: that (1) the wetlands site would not support construction of the towers; (2) the towers would not be compatible with the future development of the area for residential use; (3) the towers would diminish the value of neighboring property; (4) the radiation from the towers would endanger the public health and safety of neighboring residents; and (5) no unique circumstances existed justifying the proposed site. Polnet

^{2/} A copy of the standards is attached hereto as Exhibit A. One of the standards requires that the site not diminish or impair property values within the neighborhood. Polnet noted that Commonwealth Edison had an easement with high power lines located in the neighborhood; a study indicated that to the extent that property values were to be diminished, those lines would have already diminished the property values in the area.

submitted evidence to counter each of these assertions to no avail; after a hearing, the application for a conditional use permit was recommended for denial.^{3/}

II. DISCUSSION

Polnet fully supports the proposed preemption rule and urges that any rule adopted should not be limited to DTV facilities or to those broadcast facilities forced to relocate as a result of DTV conversion. Time delays and unreasonable denials of conditional use permits are problems common to all broadcasters, not just those seeking to deploy DTV services. Polnet's attempt to get local zoning authority to upgrade its station and provide better service to its targeted audience is illustrative of the struggle that many broadcasters face when local zoning authorities bow to political or community pressures regarding the placement or construction of tower facilities. As the Commission has found by experience in implementing federal preemption provisions in relation to personal communications ("PCS") services, communities opposing the construction of new tower sites do not, as a general matter, distinguish between the type of service being provided; strong opposition to *any* new or expanded tower site can persuade a local zoning authority to overstep its regulatory authority to make zoning decisions for reasons other than the traditional public health and safety reasons.^{4/} In addition, broadcasters face an even more difficult challenge when the

^{3/} Some of the reasons cited were that the tower should be placed on industrial or commercial property; the radio station would not employ anyone in McHenry County and would have no local benefit; the proposed tower would be unsafe and the soil would not support the structures; and the towers would diminish or impair the property values in the area. A copy of the decision of the Zoning Board of Appeals Report to the McHenry County Board, Petition No. 97-03 ("Board of Appeals Report") is attached at Exhibit B. A rehearing is scheduled.

^{4/} For example, many PCS providers that participated in the Commission's February, 1997, Wireless Siting Forum expressed concern regarding the public's misconceptions about RF radiation and tower siting issues, with many residents expressing "not in my backyard" opposition that was validated by local zoning boards.

programming to be provided by the new or upgraded facility, such as Polnet's, serves a niche market.

As an example, one of the reasons cited for the denial of Polnet's application was that no local benefit would be gained by the surrounding areas of the towers or to McHenry County in general, in spite of testimony from Polnet that McHenry County had a substantial Polish-American population that would benefit from the increased level of service of the radio station.^{5/} Similarly, reference was made in the minutes of the vote on the application that the radio station was not going to employ anyone in McHenry County.^{6/} In making this assessment, proper consideration was not given to the fact that a radio station, while located in one community, may serve more than that community's broadcasting needs. More importantly, local zoning authorities should not be allowed to make zoning decisions based upon how many people are to be employed from the community.

Polnet recognizes that local zoning authorities have traditionally been charged with the responsibility of protecting the health and welfare of its citizenry and to maintain certain aesthetic qualities; however, Polnet's attempts to demonstrate that its proposed tower site would not be detrimental to the health or safety of the citizens of McHenry County were simply ignored.^{7/} Without federal preemption rules requiring local zoning authorities to demonstrate that such regulations are reasonable in light of a clearly defined health or safety objective and the interests of broadcasters to provide service to the public in a competitive

^{5/} See minutes of the Zoning Board of Appeals vote, attached at Exhibit C, at 16, ¶¶ 16-24.

^{6/} *Id.*

^{7/} Similarly, the presence of power lines in the same community contravenes the diminution of property value arguments proffered by opposing parties.

manner, local zoning authorities can deny tower siting applications and thereby deny broadcast communications services to the public at large.

Although the Commission has a statutory obligation to ensure the rapid roll-out of DTV services, issues of zoning and tower construction between DTV facilities and all other broadcast facilities are intertwined in a manner that cannot justify inconsistent regulatory treatment. Accordingly, any preemption rules adopted to assist DTV facilities should be extended to all broadcast facilities.

III. CONCLUSION

Polnet supports the Commission's efforts to balance federal and non-federal interests in the provision of broadcast communications and encourages the Commission to move forward, consistent with the positions expressed herein, to adopt preemption rules which will foster the ability of broadcast licensees to continue to provide the public with a diverse offering of broadcast program services.

Respectfully submitted,

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Its Attorneys

Dated: October 30, 1997

date of the existing Conditional Use Permit. Failure to file an application within this time frame shall result in the cessation of all operations provided for under the expired Conditional Use Permit until such time as a new Conditional Use Permit takes effect.

502.3 STANDARDS FOR CONDITIONAL USES

No conditional use shall be approved unless, after public hearing and recommendations of the McHenry County Zoning Board of Appeals, as is provided, the McHenry County Board shall find:

1. That the petitioner has demonstrated the ability to meet the requirements listed in the section covering individual conditional uses. 911.4
2. That the site shall be so situated that the proposed use is compatible with the existing or planned future development of the area.
3. That the establishment, maintenance or operation of the conditional use shall not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the neighboring vicinity.
4. That the conditional use shall not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
5. That the conditional use shall not substantially diminish and impair property value within the neighborhood.
6. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
7. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion and hazard on the public streets.
8. That the conditional use shall in all other respects conform to the applicable regulations of the McHenry County Zoning Ordinance for the district in which it is located.

91
Authority to Zoning Ordinance § 805(2)
That the conditional use is reasonably in the interest of the public welfare.

502.4 REQUIREMENTS FOR PARTICULAR CONDITIONAL USES

The following sections contain information specific to each listed conditional use, including:

1. Additional information which must be filed with the applications for that particular use.
2. The minimum requirements which apply to that conditional use and any other criteria to be applied in evaluating that type of conditional use.

503 AIRPORTS, RESTRICTED LANDING AREAS AND HELIPORTS

503.1 APPLICATION

In the case of an application for Conditional Use Permit to establish or operate an

ZONING BOARD OF APPEALS REPORT

TO THE MCHENRY COUNTY BOARD

PETITION #: 97-03

1. **Petitioners:** Old Kent Bank, N. A., as Trustee under Trust No. 6049, Owner, and Polnet Communication, Ltd., Contract Purchaser.
2. **Request:** The petitioner requests a Conditional Use Permit to allow the construction of four radio communication towers at a height of 194.5 feet.
3. **Location & size of property in question:** The property consists of approximately 20.0 acres and is located approximately one quarter of a mile north of Route 176, one quarter of a mile south of the Commonwealth Edison right of way, and approximately one quarter of a mile east of Mt. Thabor Road in Dorr, Township, McHenry County, Illinois.
4. **Date and time of hearings:** April 3, 1997 @ 1:30 P.M.
5. **Location of hearing:** McHenry County Government Center, 2200 North Seminary Avenue, Woodstock, Illinois 60098 Rm. #B-170.
6. **Present at hearing:**
 - A. ZBA Members: (See Attached)
 - B. Witnesses: (See Attached)
 - C. Attorney: (See Attached)
 - D. Public: (See Attached)
7. **Items of evidence: (Petitioner)**
 1. Air Photos of PIQ
 2. Site Plan for PIQ
 3. Polnet Communications description
 4. Group Exhibit (Certificate of Insurance, Modification of FCC Permit, FCC License, FAA Notice, Site Plan, Coverage Maps, Vertical Plan of Construction, Description of Polskie Radio, Illustration of Tower Visibility, Polish Audience Demographics)

Items of evidence: (Objector)

 1. Village of Lakewood Objection
 2. Cellular Towers, EMR, and Health Effects

8. SUMMARY OF TESTIMONY AT HEARING:

Mr. Bob Kenny, attorney for the petitioners, stated to the Zoning Board of Appeals that his clients are before the board seeking a Conditional Use Permit allow the construction of four radio communication towers at a height of 194.5 feet. Mr. Kenny indicated that Polnet Communications has a contract to purchase a 20 acre portion of a 50 acre parcel from Mr. & Mrs. Edwin Voss, with a 66 foot access easement to the property in question. Mr. Kenny pointed out that the property is just south of the Commonwealth Edison high tension lines, and south and west of towers ranging from 300 feet to 500 feet near the McHenry County College and off of Olmstead Road. He explained that the four radio towers would be for the AM radio station known as WNVR, an all Polish

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radio station. Mr. Kenny further stated that due to the towers not exceeding 200 feet in height, the FAA will not require the towers to be painted red and white and the FAA will not require illumination at the top of the tower. In addition to the four towers proposed, the petitioners also request the permission to build a 30' x 20' building to enclose all electrical equipment necessary to run the facility.

Mr. Edwin Voss, owner of the property, testified that he was approached by Polnet Communications to buy some land to construct four towers. Mr. Voss stated that he believed the towers would not affect property values because the towers would be less than 200 feet, they would be painted gray and that they would not have lights on them. He indicated that the 20 acre portion of the 50 acre site is very low and damp, has never been farmed, and was the furthest area away from houses in the area.

Mr. Kenny then questioned Mr. Kent Gustafson, Vice-President / General Manager of Polnet Communications. Mr. Gustafson testified that Polnet Communications had started experimenting with the Polish audience about eight years ago before purchasing a full time radio station for Polish radio in 1992. He stated that he noticed a very large and substantial amount of Polish Americans living not only in Chicago, but also in McHenry, Lake and Cook Counties and up in to Wisconsin. Mr. Gustafson testified that Polnet Communications currently has a one hundred watt nondirectional radio station in Vernon Hills which covers a 70 mile radius. One of the key reasons for positioning the four radio towers at this location is to allow the station to cover a 120 mile radius, which would include the Chicago and Milwaukee metro areas and allow services to be delivered to more of the Polish Americans in the marketplace. Mr. Gustafson indicated that other reasons for locating at this particular site was because of the topography, the location, the other similar uses within the area, and because the site is not useable for farming or residential purposes. He also stated that the site has both the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) approval to construct the four towers.

Through cross-examination by the Board, Mr. Gustafson testified that the towers are a directional system with a power of 4,000 watts, the hours of operation of the radio station are from sunrise to sunset, that the station has a variety of programming (i.e. talk shows, top 40 music, news, immigration laws), and that he has approached other radio stations in the vicinity on sharing towers, but found out that this would not be an efficient use because of the current placement of the towers. He further indicated that Polnet Communications has had cellular companies co-locate on their existing towers, that McHenry County has a market for a possible 20,000 to 25,000 households, and that this site is approximately 18 miles from the site in Vernon Hills. When cross-examined by Mr. Michael Friesen, Administrator for the Village of Lakewood, Mr. Gustafson stated that the site selection was based on a five mile radius of the site currently picked, that this site was the most technically suited, and that he was looking for low ground that maintained a wetter more constant level of water texture.

Mr. Mark Mueller, a technical consultant, was called to testify. Mr. Mueller stated that he is the owner of Mueller Broadcasting Design, that he is a licensed FCC radio operator, and that he works with radio stations to design antenna styles and find power levels so a radio station can be licensed with the FCC. He indicated that the towers were placed on the site plan in a sort of diamond

MCHEERY COUNTY PAD

configuration in order to shape a signal that would not interfere with other stations located in Kenosha, Wisconsin; Union City, Indiana; and Des Moines, Iowa; and that the towers could not be put in a different configuration or moved to a different location without interfering with other stations. Mr. Mueller stated that Polnet Communications could not utilize other radio or cellular towers within the area because they are configured in a entirely different way. Mr. Mueller testified that due to the land being fairly swampy, the towers, which are self supporting, would have to sit on a pier to give them a sturdy base. He stated that the wet ground helps AM because of a bare copper wire that runs below ground to the four towers that cannot be disturbed by frost, and that the ground conditions help stabilize the antenna from a rating standpoint. Mr. Mueller indicated that the towers are rated at a 120 mile an hour wind, that the towers have to be fenced in, and that the towers have a very low impact environmentally; not generating any traffic, garbage, chemicals, or radiation. He further testified that an AM station utilizes the entire tower as an antenna, unlike FM and cellular towers. This allows the AM signal to radiate in all directions at the same time, so you do not have the kind of beams you would get from a microwave antenna or cellular antenna.

Through cross-examination, Mr. Mueller reiterated that Polnet Communications could not use any existing towers within the area and that AM radio is enhanced by wet ground because of the conductivity it produces. Mr. Mueller indicated that due to wetlands on the property, Polnet Communications would have to contact and comply with the Army Corps of Engineers regulations; that the Environmental Protection Agency (EPA) requires fences to be 15 feet away from and surrounding the towers, that the towers will be placed on aeronautical charts, and that construction equipment would not disturb drainage tile in the area.

Mr. John Whitney, a real estate appraiser, indicated that the four towers would not cause a substantial diminution in property values in the neighborhood. He stated that the existing Commonwealth Edison towers and high tension lines currently located in the neighborhood substantially diminishes the value of adjoining lands and nearby lands and that the towers are compatible with other uses in the area.

Through cross-examination, Mr. Whitney indicated that he was not hired to determine if this was a good place for additional towers, but was hired to determine if the installation of the towers would have an adverse affect on the surrounding property values. Mr. Whitney stated that he has done a study on the effect of Commonwealth Edison lines and adjacent single family residential areas which showed a pretty substantial diminution of value for adjacent properties.

Mr. David Dybas, maintenance engineer for Polnet Communications, testified that his primary function is to insure that Polnet's transmitting equipment is operating at its peak performance. He stated he is a first class certified FCC engineer, that he does visits to the site, examines the transmitting equipment, checks all the meters, makes sure that all tower perimeters of a particular piece of equipment are being met, changes air filters to insure there is not excessive heat being generated and inspects the property to ensure that the property itself is secure. Initially he inspects a site twice a month for about six months, and after that inspections are done once a month.

Through cross-examination, Mr. Dybas indicated that sensors are attached to transmitting gear that indicate if there is a problem with any of the towers, and that if a sensor would set off a security alarm, the system would consecutively ring a half-dozen telephone numbers until it gets a response. Mr. Gustafson also indicated that they have a second security system to monitor the building, in case there would be a fire or flood. Mr. Kenry then addressed the Standards for Conditional Use listed in Section 502 and 523 of the McHenry County Zoning Ordinance.

During public comment, Mr. Friesen indicated that the Village of Lakewood did issue a letter of objection to the Zoning Board of Appeals. Mr. Friesen then summarized the Village's letter, stating that the petition did not describe the purpose for the towers or justify why they were needed, that the area is designated residential on the Village's Comprehensive Plan, that the planned future use of the area will be negatively affected, and that a project of this magnitude should be in industrial zoned areas. Mr. Friesen indicated that he would strongly urge the County to adopt a co-locational ordinance, requiring people to share antennas if its technologically feasible.

John Purtil, a representative of Automatic Liquid Packaging, indicated that his clients have owned property immediately to the south of the subject site since 1995 and that they were not notified of the hearing. He stated that the petition was therefore defective and requested a significant continuation be given to allow Automatic Liquid Packaging to put forth evidence to the contrary of what was heard at the hearing. After reviewing the file, Chairman Haerter noted that Automatic Liquid Packaging was notified by certified mail on the 14th of March and denied the request.

Blaine Klimczak, public, asked how organically sound the soils are insuring that the towers would not fall. Mr. Kenry stated that there was a study of the soils on the property and that they would send the Board a copy of the study. Mr. Thomas Okeson, public, also raised a concern with the health risks (electromagnetic radiation) and property value risks.

9. **Planning & Development Department Staff Report-Comments and Conclusions:** The purpose of the Conditional Use is to establish standards for those uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location.

There are standards listed in Article V, Section 502.3 (Standards for Conditional Uses) and Article V, Section 523.2 (Requirements for Towers) of the McHenry County Zoning Ordinance that must be met in order for this request to be approved by the Zoning Board of Appeals and ultimately by the McHenry County Board.

10. **Soil and Water Conservation District Report:** The McHenry County Soil and Water Conservation District states that a majority of the site is Houghton Peat which is unstable soil and has severe limitations for construction, wetlands cover 88% of the property, recommends a soil erosion plan, and notes hydric soils on 75% of the property.

MCHEERY COUNTY P&D

11. Illinois Department of Conservation: The consultation process has been terminated, no endangered species are affected.
12. Facts that support recommending approval of the amendment: None
13. Facts that support recommending denial of the amendment:
 - 1.) The petitioner has not demonstrated the ability to meet the requirements in the conditional use section.
 - 2.) The site is not compatible with the existing or planned future development of the area.
 - 3.) The use will endanger the public safety and be injurious to the use and enjoyment of other property in the immediate vicinity.
 - 4.) The use will substantially diminish and impair property values in the neighborhood.
 - 5.) The property will not have adequate utilities or access roads
 - 6.) The need for the towers at this location has not been met to the satisfaction of the Board.
 - 7.) The soil report done by STS Consultants recommends that the petitioners find a different site, that roadways would sink, and that the soils are not capable of providing lateral resistance necessary for the use of the dead man anchors.
14. Motion: Made by Bert Emerson, Seconded by Mike McNerney to approve the conditions as developed on Petition #97-03:
 - 1.) The time limit for the Conditional Use Permit shall be 25 years from the date of approval by the McHenry County Board.
 - 2.) The tower(s) shall be removed by the owner of the tower at the expiration of the Conditional Use Permit, unless the Conditional Use has been extended by the McHenry County Board, or when no longer used for the purpose constructed.
 - 3.) Only four (4) towers in excess of 100 feet and not to exceed 194.5 feet shall be allowed on the property in question. One 20' x 30' accessory building for tower maintenance shall be allowed on the property in question.
 - 4.) The terms of the Conditional Use Permit shall be in accordance with Section 523.2 (Requirements for Towers) of the McHenry County Zoning Ordinance.
 - 5.) All work on the property in question shall receive approval or waiver, if required, from the Army Corp. of Engineers, and other permits or waivers needed in the future.
 - 6.) Any drainage tile damaged or destroyed on the property in question shall be replaced by the owner or leasee of the property in question at discovery.

15. Vote: 6 - AYES; 0 - NAYS; 1 - ABSTAIN

Mike McNerney - Aye
Ed Haerter - Aye
Bert Emerson - Aye
Thomas Burney - Abstain
Ella Martin - Aye
Rich Kelly - Aye
Elizabeth Scherer - Aye

16. Motion: Made by Rich Kelly, Seconded by Elizabeth Scherer, to recommend approval of a conditional use permit to allow the construction of four towers, subject to the conditions previously approved.

17. Vote: 1 - AYE; 5 - NAYS; 1 - ABSTAIN

Mike McNerney - Nay
Ed Haerter - Nay
Bert Emerson - Aye
Thomas Burney - Abstain
Ella Martin - Nay
Rich Kelly - Nay
Elizabeth Scherer - Nay

18. Motion: Made by Rich Kelly, Seconded by Elizabeth Scherer, to recommend denial of a conditional use permit to allow the construction of four towers.

19. Vote: 5 - AYES; 1 - NAYS; 1 - ABSTAIN

Mike McNerney - Aye
Ed Haerter - Aye
Bert Emerson - Nay
Thomas Burney - Absent
Ella Martin - Aye
Rich Kelly, Jr. - Aye
Elizabeth Scherer - Aye

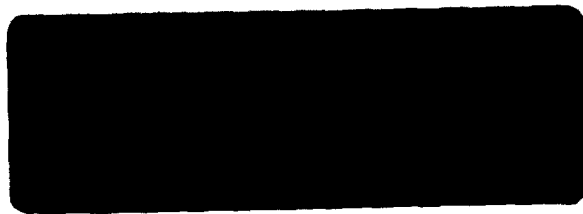
GOES TO COUNTY BOARD WITH ZBA RECOMMENDATION FOR DENIAL.

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VOTING MEETING OF THE McHENRY COUNTY
ZONING BOARD OF APPEALS

IN RE: PETITION #97-03

(Public hearing held before the
(McHenry County Zoning Board of
(Appeals, at the McHenry County
(Government Center, on Tuesday,
(April 22, 1997, at the hour
(of 9:30 a.m.



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PRESENT: EDWARD HAERTER, CHAIRMAN
BERT EMERSON
ELLA MARTIN
ELIZABETH SCHERER
MICHAEL MCNERNEY
RICHARD KELLY
TOM BURNEY

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APPEARANCES: SCHAIN, FIRSEL & BURNEY

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WITNESSES: None.

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PUBLIC: BRIAN DEPIES, Staff

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1 MR. BURNEY: Can I put on the record, I'm
2 not going to participate in this next decision.
3 I wasn't at the hearings. I'm not going to
4 participate. I haven't talked to anybody about
5 this, because a member of my firm is representing
6 the petitioner.

7 CHAIRMAN HAERTER: For those of you that are
8 here, I should have explained this before we
9 started this morning. We talk about the
10 conditions as if the petition was going to be
11 approved. Whether we vote it up or down, the
12 conditions are voted on first because the County
13 Board will need the conditions.

14 We are only a recommending body. They
15 will look at the conditions. They may alter the
16 conditions. And then they vote on the petition
17 itself. So they want us to recommend conditions
18 whether or not we recommend the petition to them.
19 And that's the reason we do it in the order we do
20 it.

21 We will call the meeting back to
22 order. And the petition we are going to debate
23 now is 97-03. The first thing we will talk about
24 is conditions. We have a list of conditions from

1 Staff.

2 Before we start on condition 3, in
3 talking to the petitioner, they would like to add
4 the words (equipment and) after the word tower in
5 the second line. It will say then one, 20 by 30
6 accessory building for tower equipment and
7 maintenance shall be allowed on the property in
8 question.

9 Okay. Number 1, time limit for the
10 conditional use shall be 25 years from the date
11 of approval. Any thoughts on that?

12 MRS. SCHERER: I haven't seen any go over 20
13 years. If everyone is happy with 25, we can
14 leave it.

15 MR. EMERSON: What would you like it, Liz?

16 MRS. SCHERER: 20 was my thought.

17 MR. EMERSON: Think we will have any wireless
18 radio by then?

19 MRS. SCHERER: I think you run the risk of
20 that in the next 5 or 6 years.

21 CHAIRMAN HAERTER: 25 okay with everyone?

22 MRS. SCHERER: I will leave it at 25. If I
23 have a problem with it, I will vote against all
24 the conditions.

1 CHAIRMAN HAERTER: Mr. Burney did excuse
2 himself from this because he -- one of the
3 attorneys representing the petitioners are from
4 his firm. So he did not attend the hearing or
5 have any input on this.

6 Number 2, the tower shall be removed
7 by the owner of the tower at the expiration of
8 the conditional use permit unless the conditional
9 use has been extended by the McHenry County
10 Board, or when no longer used for the purpose
11 constructed.

12 Okay. Number 3, only 4 towers in
13 excess of 100 feet and not to exceed 194.5 feet
14 shall be allowed on the property in question.
15 One, 20 by 30 accessory building for tower
16 equipment and maintenance shall be allowed on the
17 property in question.

18 Number 4, terms of the conditional use
19 permit shall be in accordance with section 523.2,
20 (requirements for towers) of the McHenry County
21 Zoning Ordinance.

22 Number 5, all work on the property in
23 question shall receive approval or waiver if
24 required from the Army Corp of Engineers, the

1 Illinois Department of Natural Resources, and the
2 McHenry County Department of Planning and
3 Development.

4 Number 6, any drainage tile damaged or
5 destroyed on the property in question shall be
6 replaced by the owner or leasee of the property
7 in question.

8 MR. EMERSON: Maryanne, are all those items
9 in number 5 in the file?

10 MS. WANASKI: I'm sorry, Bert. This is
11 Brian's petition. You have to ask him.

12 MR. DEPIES: What was your question?

13 MR. EMERSON: Are all the items of approval
14 or waiver in item 5 in the file at this time?

15 MR. DEPIES: I don't believe so. The only
16 one they are required to receive right now to my
17 knowledge is the Army Corp of Engineers. The
18 reason I put the Illinois Department of Natural
19 Resources and the McHenry County Planning
20 Department is because we also have flood hazard
21 area on the property.

22 If that is affected, as we stated
23 before, they might have to come back through the
24 conditional use process.

1 MR. EMERSON: So the only one to proceed at
2 this moment would be the Army Corp of Engineers?

3 MR. DEPIES: Yes. I believe they still have
4 to receive the permit from the Army Corp.

5 MR. EMERSON: Then should we say approval or
6 waiver if required from the Army Corp of
7 Engineers, and other waivers or approval as
8 needed in the future?

9 MR. DEPIES: That would be fine.

10 MR. EMERSON: Meaning that we don't have to
11 have those right now.

12 MR. DEPIES: I agree with that.

13 MR. EMERSON: Now we have to talk to the rest
14 of the Board.

15 CHAIRMAN HAERTER: What was your problem with
16 the original wording, Bert?

17 MR. EMERSON: Well, it looks like we should
18 have those in the file right now. And the only
19 thing we need right now would be the Army Corp of
20 Engineers, which I agree with. And the rest of
21 them will take place if conditions require it.

22 CHAIRMAN HAERTER: Okay. So how is this
23 going to read then, number 5?

24 MR. DEPIES: All work on the property in

1 question shall receive approval or waiver if
2 required from the Army Corp of Engineers, and
3 other permits or waivers needed in the future.

4 MR. EMERSON: If you want to state Illinois
5 Department of Natural Resources and McHenry
6 County, fine. But we can leave it wide open. It
7 might create 3 other agencies we have to go
8 through.

9 CHAIRMAN HAERTER: Number 6 on the drainage
10 tile. Any questions on that?

11 MRS. SCHERER: I would like to put something
12 in there with regard to when that needs to be
13 replaced. As we know, a broken drain tile can
14 cause a great deal of problems for a great number
15 of people.

16 I would like to put something in there
17 with regard to, you know, within a day, a week, a
18 month, whatever.

19 MR. EMERSON: Of discovery or of breakage?

20 MRS. SCHERER: They are going to know when
21 they break. It is pretty obvious you got drain
22 tile in your backhoe.

23 MR. EMERSON: I would be reasonable with the
24 words at discovery, if you want to put a time

1 limit on it. But I'm not in favor of a time
2 limit on the repair. They just have to repair
3 them.

4 MRS. SCHERER: Within 30 years?

5 MR. EMERSON: Leave it up to the enforcing
6 officer.

7 CHAIRMAN HAERTER: Did you want to add any
8 language to that? You said at discovery?

9 MR. EMERSON: Well, make it read that way, if
10 you want. I'm catering to Liz's objections. If
11 she doesn't object, I'll go along.

12 MRS. SCHERER: I would just rather say within
13 a given period of time.

14 MRS. MARTIN: I think it would be important
15 to put some language just because we have heard
16 testimony before that in this area, this general
17 area, there has been some tile damage, and it was
18 abandoned.

19 CHAIRMAN HAERTER: Brian?

20 MR. DEPIES: I think Bert's wording at time
21 of discovery would work in this instance, for the
22 simple reason even if there was a 6 month time
23 limit, he may be granted extensions by the code
24 enforcement officer.